U.S. Department of Labor

Office of Administrative Law Judges
O'Neill Federal Building - Room 411
10 Causeway Street
Boston, MA 02222

(617) 223-9355
(617) 223-4254 (FAX)

Issue Date: 17 July 2006

CASE NO. 2005-LHC-0309
OWCP NO. 01-148690

In the Matter of

ALFRED Y. WINSLOW, JR. (Deceased)
CLAUDETTE WINSLOW (Widow)
Claimant

v.

BATH IRON WORKS CORPORATION
Employer/Self-Insured

DECISION AND ORDER DENYING BENEFITS

This proceeding arises from a claim for survivor's benefits filed by Alfred Winslow, Jr. (the "Decedent") and Claudette Winslow (the "Widow" or "Claimant"), against Bath Iron Works Corporation ("BIW" or "Employer") under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq.* (the "Act"). After an informal conference before the District Director of the Department of Labor's Office of Workers' Compensation Programs ("OWCP"), the matter was referred to the Office of Administrative Law Judges ("OALJ") for a formal hearing. A hearing was conducted before me in Portland, Maine on April 26, 2005, at which time all parties were afforded the opportunity to present evidence and oral argument. The Hearing Transcript is designated herein as "TR". The Claimant, Claudette Winslow, appeared at the hearing represented by counsel, and an appearance was made by counsel on behalf of the Employer. The parties offered stipulations, and testimony was heard from the Claimant, and from her son Alfred Winslow, III. Documentary evidence was admitted without objection as Claimant's Exhibits ("CX") 1-18 and Employer's Exhibits ("EX") 1-7, 9-10. TR 8-9.[1] The official papers were admitted without objection as ALJ Exhibits

[1] At the hearing, I granted BIW's unopposed motion to keep the record open for the submission of additional deposition transcripts. TR 10-11. The Employer subsequently submitted the deposition of Dr. Minton marked as EX 6 and the deposition of Dr. Shaw marked as EX 7. These exhibits have now been admitted. In addition, following the hearing, the Employer informed the undersigned by letter dated July 15, 2005 that he was unable to locate three documents which were listed as being included in the Claimant's exhibits and therefore, the Employer submitted the documents marked as EX 8, EX 9 and EX 10 and requested that they be admitted as his exhibits. Upon review of the record, the Employer's document marked EX 8, which is a page from the BIW Health Department records, is included in CX 6 at 182 and thus I will not admit this document as it is a duplicate. Documents marked EX 9 and EX 10 are pages from progress notes of Dr. Raczynski. Neither of these documents were included in Dr. Raczynski's records admitted as CX 2. The Claimant has not objected to the admission of these two documents. Accordingly, EX 9 and 10, pages from the progress notes of Dr. Raczynski are admitted.

("ALJX") 1-7. TR 10. Post-hearing, the parties submitted stipulations which were marked and admitted as Joint Exhibit ("JX") 1. TR 7. Thereafter, the parties filed briefs. The record is now closed.

My findings of fact and conclusions of law are set forth below.

II. Stipulations and Issues Presented

The parties stipulated to the following: (1) the Longshore Act applies; (2) an employer/employee relationship existed at all relevant times; (3) the Decedent, Alfred Winslow, Jr., sustained a compensable mental injury arising out of and in the course of employment on August 11, 1999; (4) the claim for survivor's benefits alleging death on August 3, 2003 was timely noticed, filed and controverted; (5) the informal conference was conducted October 21, 2004; (6) the Decedent's average weekly wage is $870.55; (7) prior to his death, the Decedent had been paid temporary total disability compensation from May 14, 1999 to June 6, 1999 and from August 13, 1999 to June 19, 2000 and temporary partial disability compensation benefits from June 20, 2000 to August 3, 2003. JX 1.

The issues in dispute are (1) whether the Decedent's work-related psychological injury caused or contributed to his coronary artery disease which caused his sudden cardiac death; and if so (2) whether the Employer is entitled to relief from liability under Section 8(f) of the Act.

III. Findings of Fact and Conclusions of Law

A. Background

The Decedent, Alfred Winslow Jr., was receiving temporary partial disability compensation benefits at the time of his death on August 3, 2003 based upon a Decision and Order issued by Administrative Law Judge David DiNardi on April 4, 2001. CX 10; JX 1. Mr. Winslow was 59 years of age at his death. His employment history is detailed in Judge DiNardi's decision and therefore it is unnecessary to repeat it in detail here. Briefly, the Decedent worked as a carpenter at BIW and he last worked at the shipyard in August 1999. CX 11 at 333. The Decedent was diagnosed with a non-work related personality disorder which made it difficult to tolerate others. CX 11 at 334. Judge DiNardi also found that Alfred Winslow suffered from work-related depression as a result of the juvenile and loutish behavior of co-workers at BIW. CX 10 at 12-13.[2]

The widow, Claudette Winslow, stated that she married the Decedent on December 17, 1964, divorced in 1974, and remarried him in 1986. TR 15. Mrs. Winslow testified that prior to working for BIW, her husband did masonry, concrete and stonework. TR 16. She stated that he put effort into his work and took pride in his work. TR 16-17. As a result of his experience at

[2] On July 11, 2003 Administrative Law Judge Jefferey Turek denied both the Employer's and the Decedent's Petitions for Modification of Judge DiNardi's Decision and Order awarding benefits. CX 11. Judge Turek found that the Employer failed to establish a change in Decedent's medical condition. CX 11 at 335.

BIW, which is detailed in Judge DiNardi's decision, she stated that her husband changed. She explained that before the work-related psychiatric injury they were active, hosting cookouts, going to restaurants and socializing. TR 18-19. She testified that after the summer of 1999 her husband was uncomfortable around other people and only socialized with his son and grandchildren. The Claimant also stated that as a consequence of his experience at BIW her husband was unable to complete projects he began and that he was stripped of his pride. TR 19-21. She reported that her husband felt BIW had ruined his life. TR 22-23.

The Claimant's son, Alfred Winslow III, is a deputy sheriff in Cumberland County. TR 34. He testified that he noticed a change in his father following the work-related psychiatric injury. He stated he purchased a fixer-upper residence near his parents' home at about the time of his father's work injury. TR 34-36. He said he expected his father to be able to assist him in making repairs, as they had frequently completed projects together. *Id*. Mr. Winslow stated that his father did not complete the projects he started. Mr. Winslow also noticed a decline in the quality of his father's work and reported that previously his father had taken great pride in the quality of his work. TR 37.

The Decedent began treating with Lawrence Fischman, M.D., a psychiatrist on June 2, 1999 for the work-related psychological condition. CX 1 at 1; CX 12 at 356. He continued to treat with Dr. Fischman for his psychiatric issues up to the time of death. Dr. Fischman testified that the Decedent has a personality disorder and was "someone with a rigid personality who is inflexible, who over reacts to certain situations, who is easy to anger." CX 12 at 348, 345. Dr. Fischman also diagnosed major depression. *Id*. at 356. Dr. Fischman explained that the personality disorder developed over many years and was present before the work injury of June 1999. *Id*. at 348. Dr. Fischman opined that the Decedent's depression was significantly caused by his work at BIW. CX 12 at 357. Over the course of his treatment. Dr. Fischman indicated that the Decedent's depressive symptoms had improved and stabilized, but were still present. EX 12 at 15-16, 25-26. At his May 28, 2003 office visit, Dr. Fischman noted that the Decedent's "mood has basically been stable with occasional episodes of irritability and depression." CX 1 at 43.

The Decedent was hospitalized for pneumonia in February 2001 and experienced a small, non ST elevation myocardial infarction. CX 3 at 102; CX 5. He was then seen by Roy Ulin, M.D., a cardiologist, on February 26, 2001. CX 5. Dr. Ulin diagnosed coronary artery disease, hypertension and COPD. CX 3 at 102, 104. Dr. Ulin prescribed a cardiac rehabilitation program and medication. Mr. Winslow did not complete the rehabilitation program. In addition, the Decedent continued to smoke until his death. CX 1 at 43. In September 2001 and again on July 25, 2003, the Decedent saw Dr. Ulin reporting incidents of syncope (blackouts) preceded by coughing. CX 3 at 107, 110. In July 2003, Dr. Ulin noted that the Decedent reports the syncope "episodes occur with a sudden cough, particularly if he is emotional or upset about something." CX 3 at 110. Dr. Ulin recommended an implanted loop recorder to assess the etiology of the syncope and scheduled the procedure for August 6, 2003. The Decedent died before the procedure could be performed.[3]

[3] Dr. Ulin also advised the Decedent not to drive until the cause of the syncope episodes could be determined. *Id*.

Paul Minton, M.D., a specialist in cardiovascular medicine, performed a records review of the Decedent's medical records prior to his cardiac arrest and the records associated with his death at the request of the Decedent's counsel. CX 4. Dr. Minton opined that the Decedent's death was caused by a sudden cardiac death because of cardiac rhythm disturbance due to well documented coronary atherosclerotic heart disease. CX 4 at 115. Dr. Minton also opined that the Decedent's "chronic stress induced psychiatric disorder which was causally related to his work substantially accelerated and exacerbated his underlying coronary atherosclerotic heart disease resulting in sudden cardiac death." CX 4 at 115. In his deposition, Dr. Minton expanded on the conclusions in his report and he testified that the Decedent had several risk factors for coronary artery disease including a family history of heart disease, hypertension, and smoking. EX 6 at 15-19. He also testified that coronary artery disease was a factor in the Decedent's death as well as chronic stress. EX 6 at 29. In support of his opinion that the work related psychiatric condition contributed to the Decedent's death, Dr. Minton testified that he relied upon the Decedent's record of treatment for depression with Dr. Fischman and Dr. Racynski, the testimony of the Decedent's family that his experiences at BIW continued to affect his outlook and mental status, as well as several articles in accepted medical or scientific journals which Dr. Minton stated demonstrate a link between chronic stress and coronary artery disease. EX 6 at 4-9, 30-34, 41-46. In particular, Dr. Minton relied upon articles by Allen Rozinski and Sarah Knox. EX 6 at 42-43.

Peter K. Shaw, M.D., reviewed the decedent's medical records at the request of the Employer. He noted that the Decedent had a family history of heart disease, hypertension and COPD and was a smoker. Dr. Shaw had also reviewed the treatment records of Dr. Fischman, the Decedent's psychiatrist. Dr. Shaw's report states:

> Mr. Winslow had a clear history of coronary artery disease, documented by repeated evaluations by his cardiologist, and a medical history that included an abnormal stress test following an acute myocardial infarction. His risk factors for coronary artery disease were sufficient to explain the artherosclerotic process without invoking a relationship to the disability status based upon his personality disorder. He was a cigarette smoker with chronic obstructive pulmonary disease and although not specifically stated by Dr. Ulin, likely a patient with hypertension evidenced by the use of lisinopril and hydrochlorothiazide….While the episodes of syncope were historically associated with episodes of coughing, the patient's sudden death in August 2003, followed repeated episodes of undocumented and therefore unexplained syncope which, in retrospect, likely related to myocardial ischemia and or malignant ventricular tachyarrhythmias. The episode of sudden death may have been the result of an episode of ventricular fibrillation in the setting of acute myocardial infarction. This conclusion is likely, although unproven given the absence of an autopsy.
>
> I fail to find any relationship between Mr. Winslow's personality disorder and difficulty working at Bath Iron Works, and his subsequent coronary artery disease and sudden death. He has sufficient risk factors to explain his coronary artery disease without making the stretch to invoke his prior psychiatric difficulties. There are no hard data in the literature to suggest that chronic

> unhappiness or emotional stress has substantial relationship to ongoing atherogenesis. This lack of relationship should not be confused with the well-documented association of acute emotional distress, fear, or anger as a trigger for an acute arrhythmic event which could lead to acute sudden death. I am unaware of any such episode in Mr. Winslow's history, and thus am unconvinced that there is any relationship between his mood disorder and his development of coronary artery disease eventuating his sudden cardiac death.

EX 4 at 26-27.

Mr. Winslow died on August 3, 2003 of sudden cardiac death or a myocardial infarction.

B. Causation

An individual seeking benefits under the Act must, as an initial matter, establish that he suffered an "accidental injury…arising out of and in the course of employment." 33 U.S.C. §902(2). *Bath Iron Works Corp. v. Brown*, 194 F.3d 1, 4 (1st Cir. 1999). In determining whether an injury arose out of and in the course of employment, the Claimant is assisted by Section 20(a) of the Act which creates a presumption that a claim comes within its provisions. 33 U.S.C. §920(a). The Claimant establishes a prima facie case by proving that he suffered some harm or pain and that working conditions existed which could have caused the harm. *Brown*, 194 F.3d at 4, *Merrill v. Todd Pac. Shipyards Corp.,* 25 BRBS 140 (1991); *Murphy v. S.C.A./Shayne Bros.*, 7 BRBS 309 (1977) *aff'd mem*. 600 F.2d 280 (D.C.Cir. 1979); *Kelaita v. Triple A Mach. Shop*, 13 BRBS 326 (1981). In presenting his case, the Claimant is not required to introduce affirmative evidence that the working conditions in fact caused his harm; rather, the Claimant must show that working conditions existed which could have caused his harm. *U.S. Indus./Fed. Sheet Metal, Inc., v. Director, OWCP (Riley),* 455 U.S. 608 (1982). In establishing that an injury is work-related, the Claimant need not prove that the employment-related exposures were the predominant or sole cause of the injury. If the injury contributes to, combines with or aggravates a pre-existing disease or underlying condition, the entire resulting disability is compensable. *Indep. Stevedore Co. v. O'Leary,* 357 F.2d 812 (9th Cir. 1966); *Rajotte v. General Dynamics Corp.,* 18 BRBS 85 (1986); *Fineman v. Newport News Shipbuilding and Dry Dock Co.*, 27 BRBS 104 (1993).

Once a claimant establishes a prima facie case, the claimant has invoked the presumption, and the burden of proof shifts to the employer to rebut it with substantial evidence proving the absence of or severing the connection between such harm and employment or working conditions. *Bath Iron Works Corp. v. Director, OWCP, (Shorette)*, 109 F.3d 53 (1st Cir. 1997); *Merrill*, 25 BRBS at 144; *Parsons Corp. of California v. Director, OWCP,* 619 F.2d 38 (9th Cir. 1980); *Butler v. Dist. Parking Mgmt. Co.*, 363 F. 2d 682 (D.C. Cir. 1966); *Kier v. Bethlehem Steel Corp.,* 16 BRBS 128 (1984). Under the substantial evidence standard, an employer need not establish another agency of causation to rebut the presumption; it is sufficient if a physician unequivocally states to a reasonable degree of medical certainty that the harm suffered by the worker is not related to employment. *O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39, 41-42 (2000); *Kier,* 16 BRBS at 128. If the presumption is rebutted, it no longer controls, and the administrative law judge must weigh all the evidence and render a decision supported by

substantial evidence. *See Del Vecchio v. Bowers*, 196 U.S. 280 (1935); *Holmes v. Universal Mar. Serv. Corp.*, 29 BRBS 18 (1995); *Sprague v. Director, OWCP,* 688 F. 2d 862 (1st Cir. 1982).

The Claimant acknowledges that she has the burden of demonstrating a prima facie case that the Decedent's psychiatric injury, for which he was receiving partial disability compensation benefits at the time of death, could have contributed to his death. Cl Br. at 5. The Claimant contends that she successfully invoked the presumption of causation in Section 20 of the Act. 33 U.S.C. § 920. Cl Br. at 5. She relies upon the record of continued psychiatric treatment with Dr. Fischman up until the time of her husband's death. *Id*. She also points to the Decision and Order by Judge Turek issued three weeks before the Decedent's death holding that the Decedent's medical condition had not improved and that the psychiatric injury continued to cause a partial disability. *Id*. Additionally, the Claimant points to Dr. Minton's opinion that the Decedent's chronic stress, which was related to his work at BIW, substantially accelerated and exacerbated his underlying coronary artery disease resulting in sudden cardiac death. The Claimant has established harm, the Decedent's death, and she has established conditions at work, stress and resulting depression, which could have contributed to his death. Therefore, I find that the Claimant has successfully invoked the presumption.

The burden now shifts to BIW to rebut the presumption with evidence proving the absence of or severing the connection between the Decedent's death and his employment or working conditions at the shipyard. Under the substantial evidence standard, an employer need not establish another agency of causation to rebut the Section 20(a) presumption; it is sufficient if a physician unequivocally states to a reasonable degree of medical certainty that the harm suffered by the worker is not related to employment. *O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39, 41-42 (2000); *Kier v. Bethlehem Steel Corp*. 16 BRBS 128 (1984). The Employer relies upon the report and opinion of Dr. Shaw to rebut the presumption. In his report of April 20, 2005, Dr Shaw stated that he did not find "any relationship between Mr. Winslow's personality disorder and difficulty working at Bath Iron Works, and his subsequent coronary artery disease and sudden death." EX 4 at 26-27. At deposition, Dr. Shaw testified that the decedent's death was "a sudden death probably due to coronary artery disease." EX 7 at 13. Dr. Shaw stated that the Decedent had several classic risk factors for coronary artery disease and that it was these factors that contributed to this condition and his sudden cardiac death. Dr. Shaw opined that in his opinion and to a reasonable degree of medical probability there was no causal relationship between the 1999 work-related psychiatric condition and the death on August 3, 2003. EX 4 at 14-15.

Dr. Shaw has clearly stated that, in his judgment, the Decedent's coronary artery disease and sudden cardiac death was not causally related to his work-related depression, but rather was the result of a family history of heart disease, hypertension, abnormal stress tests following a prior myocardial infarction and probable myocardial ischemia. Dr. Shaw has also stated that there is not general acceptance in the medical community of the theory that chronic stress, as distinguished from incidents of acute emotional distress or fear, can contribute to sudden cardiac death. Accordingly, I find that Dr. Shaw's opinion is sufficient to rebut the presumption and it falls out of the case. The Claimant bears the burden of establishing causation on the record as a whole. *Bath Iron Works Corp. v. Brown*, 194 F.3d 1, 4 (1st Cir. 1999).

The medical experts, Dr. Shaw and Dr. Minton agree that the Decedent experienced a myocardial infarction in 2001 and suffered from coronary artery disease and ischemia. The physicians also agree that the Decedent had chronic obstructive pulmonary disease, hypertension and depression. Both Drs. Shaw and Minton state that the Decedent's death was likely the result of acute ischemia or myocardial infarction resulting from his coronary artery disease. The dispute between the medical experts is over whether the Decedent's work-related depression played a role in his coronary artery disease and resulting fatal myocardial infarction. Dr. Minton opined that the Decedent's chronic work-related stress has a substantial relationship to coronary artery disease and ongoing athrogenesis. Dr Shaw opined that the depression did not play a role in the coronary artery disease and sudden cardiac death. Dr. Shaw distinguishes between acute emotional distress or anger which he states can be a trigger for an acute arrhythmic event and chronic unhappiness or emotional stress which he indicates has not been shown to be a trigger for acute arrhythmic events. Both Dr. Minton and Dr. Shaw are board certified in internal medicine and cardiology and I conclude that they are equally qualified. CX 4 at 116; EX 7 (Dep Exh 1).

The crux of the dispute is whether the work-related depression played a role in the Decedent's sudden cardiac death. As the Claimant correctly argues, if the work-related psychiatric condition contributed to the Decedent's coronary artery disease, even minimally, the Employer is liable. Cl Br. at 6 citing *Fineman*, 27 BRBS 104. Dr. Minton's report finding a link between the Decedent's work-related depression and his sudden cardiac death does not discuss the well-known traditional risk factors for developing coronary artery disease. Rather his report discusses the Decedent's treatment for work-related depression and concludes that the sudden cardiac death was causally related to the work-related chronic stress induced psychiatric disorder he developed. At his deposition, Dr. Minton agreed that the Decedent had several traditional risk factors for coronary artery disease and he acknowledged that he had not taken those factors into consideration in preparing his report in which he stated that stress was a factor in the Decedent's death. In response to a question as to how he might distinguish between a very high level of stress and more general stress, Dr. Minton replied in a rather flip manner stating "it is sort of like describing a rotten egg. It's hard for me to describe it but I know it when I see it and I know it when I hear about it." EX 6 at 37. In addition, Dr. Minton acknowledged that there are objective factors one can examine in determining whether stress contributes to coronary artery disease. *Id.* at 37-38, 50-51. He explained that stress increases cortisol and adrenalin in the blood and both of these substances can have harmful effects on the lining of the artery. Dr. Minton stated that cortisol also increases cholesteral and homocysteines. *Id*. Dr. Minton indicated that there was no record that any measurement for the presence of either of these substances had been performed on the Decedent. Thus, there was no objective medical evidence supporting Dr. Minton's theory that the Decedent's depression contributed to his coronary artery disease which resulted in his sudden cardiac death. Dr. Minton's opinion that chronic stress can contribute to coronary artery disease is based upon studies which he states show a link between chronic stress and coronary artery disease. Dr. Shaw discredits these same studies arguing that they are based upon animal studies extrapolated to human populations. EX 7 at 12-13. Specifically, in discussing the Rozinski article, Dr. Shaw states "Much of what they cite is animal data…Moreover, I think the chronicity of stress which is alleged in Mr. Winslow's case is really not relevant to this paper and, moreover, I think the absence of control studies,

prospective studies and especially studies that quantitate emotional and psychological stress over time makes the conclusions that the results of isolated animal studies therefore prove in the human experience that there is a relationship. I believe that just doesn't hold." EX 7 at 27-28. Dr. Shaw acknowledges that acute emotional distress or anger can be a trigger for an acute arrhythmic event but that chronic unhappiness or emotional stress has not been shown to be a trigger for acute arrhythmic events.

After careful consideration I conclude that the medical profession has not universally accepted the view that chronic stress which exists over time as opposed to a specific acute emotional stress or event can contribute to or exacerbate coronary artery disease or atherosclerosis. Thus, the primary basis for Dr. Minton's opinion is undermined. In addition, the Claimant has not presented evidence that the objective tests Dr. Minton described for assessing whether psychological stress contributed to the Decedent's coronary artery disease, an increase in cortisol and adrenalin, were present . As noted, the Decedent had several traditional risk factors commonly associated with coronary artery disease. As a consequence, I conclude that the Claimant failed to establish by a preponderance of the evidence that the Decedent's work-related depression contributed to his sudden cardiac death. Accordingly, the claim is DENIED.

SO ORDERED.

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COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts